

Internal Revenue Service  
District Director

*The protest has been assigned to  
Mr. [redacted] at R. 10/19/87*  
Department of the Treasury  
P.O. Box 2508  
Cincinnati, OH 45201

Person to Contact:

Telephone Number

Refer Reply to:

Employer Identification Number:

Date: MAY 02 1997

Dear Sir or Madam:

We have considered your application for recognition of exemption from Federal income tax under the provisions of section 501(c)(3) of the Internal Revenue Code of 1986 and its applicable Income Tax Regulations. Based on the available information, we have determined that you do not qualify for the reasons set forth on Enclosure I.

Consideration was given to whether you qualify for exemption under other subsections of section 501(c) of the Code and we have concluded that you do not.

As your organization has not established exemption from Federal income tax, it will be necessary for your corporation to file an annual income tax return on Form 1120. Contributions to you are not deductible under section 170 of the Code.

If you are in agreement with our proposed denial, please sign and return one copy of the enclosed Form 6018, Consent to Proposed Adverse Action.

You have the right to protest this proposed determination if you believe that it is incorrect. To protest, you should submit a written appeal giving the facts, law and other information to support your position as explained in the enclosed Publication 892, "Exempt Organizations Appeal Procedures for Unagreed Issues". The appeal must be submitted within 30 days from the date of this letter and must be signed by one of your principal officers. You may request a hearing with a member of the Office of the Regional Director of Appeals when you file your appeal. If a hearing is requested, you will be contacted to arrange a date for it. The hearing may be held at the Regional Office, or, if you request, at any mutually convenient District Office. If you are to be represented by someone who is not one of your principal officers, he or she must have a proper power of attorney and otherwise qualify under our Conference and Practice Requirements as set forth in Section 601.502 of the Statement of Procedural Rules. See Treasury Department Circular No. 230.

[REDACTED]

If you do not protest this proposed determination in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b) (2) of the Internal Revenue code provides in part that:

A declaratory judgement or decree under this section shall not be issued in any proceeding unless the Tax Court, the Claims Court, or the district court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service.

If we do not hear from you within the time specified, this will become our final determination. In that event, appropriate State officials will be notified of this action in accordance with the provisions of section 6104(c) of the Code.

Sincerely yours,

C. Ashley Bullard  
District Director

[REDACTED]  
Enclosures 3



ENCLOSURE ONE

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The information you submitted indicates that [REDACTED] was formed on [REDACTED] in [REDACTED]. You filed Form 1023, Application for Recognition of Exemption under Section 501(c)(3) of the Internal Revenue Code of 1986 on [REDACTED].

Article II of your organizing document, your Articles of Incorporation, states that the purpose for which the corporation was organized is:

"To provide housing for indigent people."

Your application states that the activities of the organization shall be:

"To buy single family homes, rehab, and sell to low income families at a price below market. The differential between purchase price and sales price is to cover overhead and to provide housing for indigents similar to [REDACTED]."

Your application also states that your organization is not a membership organization and that the board is composed of five persons:

[REDACTED] President  
[REDACTED] Executive VP  
[REDACTED] VP Rehab  
[REDACTED] Secretary-Treasurer  
[REDACTED] Administration

[REDACTED] is the wife of [REDACTED]. [REDACTED] is the wife of [REDACTED]. All of these officers are to be compensated.

In your letter of [REDACTED] you state that the houses your organization will offer will be priced from \$[REDACTED] to \$[REDACTED]. The pricing for the houses will be determined on the basis of:

"acquisition cost + rehab costs + reasonable costs of overhead + exit costs like real estate commission and closing costs."

In your letter of [REDACTED] you state that the pricing of the properties your organization offers will differ from that of for-profit developers in that for-profit builders have higher overhead and higher salary expenses.

In your letter of [REDACTED] you state that these properties are to be marketed by real estate brokers receiving a standard commission.

ENCLOSURE ONE

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You also state in that letter that you do not have any agreement with any private or government agency to assist low-income home buyers in obtaining a mortgage. However, you state that you have assisted one person earning \$ [REDACTED] per year with his closing costs and that you intend to assist other people with their closing costs.

Section 501(c)(3) of the Internal Revenue Code of 1986 recognizes corporations organized and operated for charitable purposes as exempt from income tax.

Section 1.501(c)(3)-1(d)(2) of the Income Tax Regulations defines "charitable" to include the relief of the poor and the underprivileged ;

Section 1.501(c)(3)-1 of the Regulations defines the organizational and operational tests for exemption from income tax. Section 1.501(c)(3)-1(a)(1) states, "In order to be exempt as an organization described in section 501(c)(3), an organization must be both organized and operated exclusively for one of the purposes specified in the section. If an organization fails to meet either the organizational test or the operational test, it is not exempt."

Section 1.501(c)(3)-1(c)(2) states, "An organization is not operated exclusively for one or more exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals."

The term "private shareholder or individuals" is defined in paragraph (c) of section 1.501(a)-1 as "persons having a personal and private interest in the activities of the organization."

Section 1.501(c)(3)-1(d)(1)(ii) states that an organization is not organized or operated exclusively for one or more exempt purpose unless it serves a public rather than private interest.

In general the presence of a single non-exempt purpose, if substantial in nature, will preclude tax-exempt status regardless of the number or importance of truly exempt purposes. Better Business Bureau v. U.S., 326 U.S. 279, 283 (1945). A non-exempt activity will not result in denial of exemption where it is only incidental and less than substantial in nature, Seasongood v. Commissioner, 227 F.2d 907, 910 (6th Cir. 1955). A slight and comparatively unimportant deviation from the approved rule is not fatal. The IRS position on this subject is that all the resources of the organization, other than an insubstantial part, must be applied in pursuit of the exempt purpose. This position is clarified in Revenue Ruling 77-366, 1977-2 C.B. 192.



ENCLOSURE ONE

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Revenue Ruling 70-585 described a organization formed to develop a program for new home construction and the renovation of existing homes for sale to low-income families on long-term, low-payment plans. It purchased homes for renovation and lots for building new homes throughout the city in which it is located. It built new homes for sale to low-income families who qualify for loans under a Federal housing program and who could not obtain financing through any conventional channels. It also aided financially those families eligible for the loans who did not have the necessary down payment. Rehabilitated homes were made available to families who could not qualify for any type of mortgage loan. The cost of these homes was recovered, if possible, through very small periodic payments. The organization derived its operating funds through Federal loans and contributions from the general public. Where possible, renovations were made with volunteer help.

You are unlike this organization in that you do not assist low-income people who cannot obtain mortgage financing, nor do you intend to sell any homes below cost.

Revenue Ruling 69-266, 1969-1 C.B. described an organization formed and controlled by a medical doctor. The organization hired the doctor to conduct medical research which consisted of examining and treating patients. The organization then charged the patients for his service. Exemption was denied to this organization because its operations did not differ in any significant way from the for-profit private practice of medicine.

We hold that you are more like the organization described in Revenue Ruling 69-266 than the organization described in Revenue Ruling 70-585.

Apart from lower costs, you purchase, rehabilitate and sell homes in a way that is indistinguishable from that of a for-profit builder or developer. You employ commercial real estate agents to sell these homes in a way that is indistinguishable from the activity of a for-profit builder or developer. You do not assist low-income people in obtaining mortgage financing, nor do you provide low-income people with any below-market financing yourself.

The fact that you may, depending on the circumstances, assist a buyer with closing costs is not significant because many developers or home sellers make similar concessions to close a sale.

Therefore, exemption under section 501(c)(3) is denied because you do not meet the organizational and operational tests for exemption.